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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 DALE GORDON BLACK,

15 Defendant.

No. 4:18-CR-06029-EFS-1

Sentencing Memorandum

16
17 Plaintiff, United States of America, by and through Joseph H. Harrington,
18 United States Attorney for the Eastern District of Washington, and Alison L.
19 Gregoire, Assistant United States Attorney for the Eastern District of
20 Washington, submits the following sentencing memorandum:

21 I. STATEMENT OF FACTS

22 *Initiation of the Investigation*

23 On July 18, 2017, SA McEuen & SA Burns, of the FBI, downloaded via
24 BitTorrent a partial child pornography video from the user at IP address
25 71.80.158.80. On July 18, 2017, SA McEuen traced the origin of the IP address to
26 Charter Communications in Kennewick, Washington. SA McEuen served a
27

1 subpoena upon Charter Communications. On August 3, 2017, Charter
2 Communications responded to the subpoena, and reported the assigned subscriber
3 of IP 71.80.158.80, from February 15, 2017 to July 24, 2017, as Dale Black, at a
4 specific address, in Kennewick, Washington.

5 SA Burns queried local law enforcement databases for additional
6 information regarding Black and learned Black had been arrested on April 20,
7 2017 for Rape of a Child (1st Degree), Child Molestation (1st Degree), and Two
8 counts of Child Molestation (3rd Degree). This information triggered the FBI to
9 seek a search warrant immediately out of concern for the potential risk to other
10 children.

11 On August 14, 2017, SA Burns obtained a federal search warrant for
12 Defendant's residence in Kennewick, Washington. The search warrant authorized
13 seizure of evidence related to distribution, receipt, and possession of child
14 pornography. On August 15, 2017, the federal search warrant was executed at the
15 residence.

16 *Series Child Pornography*

17 Any number of items were seized from the residence. Defendant's Dell
18 Desktop and his iPhone contained approximately 664 images of series child
19 pornography and seven videos (total). The child pornography Defendant
20 possessed, but did not produce, included images belonging to 35 different
21 identified series. Some of these victims have requested restitution, as is detailed
22 further herein.

23 Defendant's iMac computer contained over 11,000 encrypted files that could
24 not be viewed. Of interest, however, the iMac also contained file sharing artifacts
25 (BitTorrent and FrostWire). Also, several known child pornography series
26 filenames were found, though the actual images were not found on the iMac.

1 *Produced Child Pornography*

2 Review of Defendant's Dell tower revealed child pornography production
3 material, in unallocated space (the images had been deleted). The FBI discovered
4 evidence Defendant had produced child pornography of at least three different
5 children. Specifically, Victim A- 24 images, Victim B - 23 images, Victim C 24
6 images, and 35 images with Victims B and C together. Of note, this includes
7 duplicates or the same photo originally stored in multiple locations.

8 Victim A lived near Black when he was a child; he is one of the named
9 victims in the state's child rape case. He indicated he was victimized by Defendant
10 from age 9 to age 14. When Victim A was interviewed he spoke about how
11 Defendant had befriended him, taking him camping and hanging out with him. He
12 would touch Victim A over and under his clothing and then he started taking
13 pictures. Defendant would tell Victim A how to pose for the photos having him
14 stand naked and flex his muscles or hold his penis. Some of the photographs of the
15 "blonde" child are described in paragraph 16 of the PSIR.

16 The other two children were Defendant's mentee (Victim B) and his friend
17 (Victim C). These children were under age 12 for all abuse, the abuse beginning
18 when they were 8 and 7 years of age respectively. Victims B and C came to know
19 Defendant through Victim B's mentoring program. Defendant had been a mentor
20 for "Ignite," a mentoring group for at risk youth. He had mentored young children
21 in academic subjects and also traveled with them, to an overnight trip alone with
22 the children.

23
24 Victim B was Defendant's mentee and would spend time at his home. Victim
25 B would bring his friend, Victim C, as well. During the forensic review of
26 Defendant's computer, several photos were located of Victim B and Victim C in
27 Defendant's home completely nude. Some nude images were also located of
28

1 Victim C's younger brother. Those images did not focus on the genitals and were
2 not charged in the federal case.

3 On Defendant's iMac computer, he had not only the images he had produced
4 of the mentees, but also a spreadsheet detailing the trips and interactions he had
5 with the mentees. The spreadsheet even included release forms from their parents.

6 Defendant took his Ignite mentee and his friend (Victims B and C) on a trip
7 to Seaside, Oregon from August 5th to August 7th in 2015. They stayed at the Shilo
8 Inn. Defendant included the trip on his spreadsheet, and even provided such
9 details as one of the kids losing a shoe, etc. He does not detail any reason why the
10 children needed to be in the room naked. Located on Defendant's Dell computer
11 in unallocated space were several photos of the children in the hotel room naked,
12 some seemingly masturbating (the boys hands are on their genitals and they are
13 looking at something on the television), some potentially involved in a sex act (the
14 boys are naked and on top of each other). Some of these photographs are noted in
15 paragraph 16 of the PSIR.

16 SA Burns obtained the hotel receipts from the Shilo Inn, in Seaside, Oregon,
17 on the relevant dates, which reflect the room was paid for by Defendant, and he
18 had two minors with him. He had a vehicle (white Subaru) at the time, which
19 again, is consistent and accurate. SA Burns obtained photos of the Shilo Inn hotel
20 room and compared them to the child pornography production images. The rooms
21 were a match. Defendant had taken the "at risk youth" to the Shilo Inn and had
22 produced child pornography of them.

24 II. SENTENCING CALCULATIONS

25 The government agrees with United States Probation that Defendant's Total
26 Offense Level is 43, his Criminal History Category is I, and the resulting guideline
27 range is 1080 months or 90 years, which is the statutory maximum.

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2 III. SENTENCING FACTORS UNDER 18 U.S.C. §3553(a)

3 In determining the appropriate sentence, this Court should consider the
4 factors as set forth in 18 U.S.C. § 3553(a).

5 1. The nature and circumstances of the offense and the history and
6 characteristics of Defendant.

7 The circumstances of the offense involve Defendant's using the most
8 vulnerable children around him to produce pornographic images. ECF No. 53 at ¶¶
9 12-22. Defendant was in a position of trust reference to the victims in this case.
10 ECF No. 53 at ¶¶ 12, 20. Thus, the characteristics of Defendant include his
11 willingness to abuse a position of trust.

12 Defendant's history is one of sexually abusing children. Though he has no
13 previous criminal convictions for sexual abuse, Defendant has a long history of
14 abusing children. The first known abuse was of in 2001 and the last in 2016. In
15 fact, Victim A, the first known victim, detailed he came forward out of concern
16 Defendant was continuing to abuse other children.

17 Defendant abused children from his neighborhood. That is how Victim A
18 and another child, discussed below, came to be victimized. Beyond utilizing the
19 trust relationships in his own neighborhood, Defendant utilized the Ignite
20 mentoring program to gain access to children—children he would abuse. This is
21 best illustrated by the letter of the mother of one of Black's former mentees. She
22 writes, in relevant part, "I have also been thinking about the types of activities that
23 I am comfortable with y'all doing, and I have to be honest that I much prefer that
24 you not hang-out at your house with him . . . I think it puts you in a vulnerable
25 liability as well to not have anyone else around." Defendant responds, "OK, with
26 that level of discomfort, I'd like to end this mentor thing with [child's name]." The
27

1 mother then forwarded the e-mail to Ignite writing, "Well, I set some boundaries
2 with Dale, and he decided not to be [child's name]'s mentor."

3 A review of Defendant's Ignite Youth Mentoring paperwork is nothing short
4 of heartbreaking. He indicates on his application that he leads a moral life equal to
5 the Bible. His recommendation was written by Victim A's mother, and she cites
6 that his involvement with her children as a friend and mentor. Victim B's mother
7 indicates her son's need of the program because Victim B needed a "male figure"
8 and "someone he could look up to."

9 2. The need for the sentence imposed to reflect the seriousness of the
10 offense, promote respect for the law, and to provide just punishment.

11 The government asks that the Court accept the plea agreement and sentence
12 Defendant to imprisonment for thirty-five years. The government asks that the
13 court also order a lifetime of supervised release. Such a significant sentence is
14 necessary to reflect the seriousness of the offense, promote respect for the law and
15 provide just punishment.

16 The gravity of Defendant's crimes against children, particularly given the
17 abuse of trust that permitted Defendant's access to the children, cannot be
18 overstated. In looking to just punishment, the government asks the Court to
19 consider the victim impact statements. ECF No. 53-1.

20 Victim A discusses how growing up and living through the abuse he
21 thought, "One day, I will be older and this will be over," only to grow older and
22 continue to suffer the pains of having been a victim of sexual abuse. These include
23 extreme stress associated just with being in his hometown, where the abuse
24 occurred. ECF No. 53-1 at 1.

25 Victim A's mother discusses not only the impact the abuse had on her son,
26 but on herself as well. She details the trust she had in Defendant—having made
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1 him a part of the family. She details the lack of trust beyond immediate family at
2 this point, and the isolation that has followed. ECF No. 53-1 at 3. She also
3 discusses a very common theme in these letters that the Court knows all too well—
4 guilt. Guilt for trusting; guilt for not knowing; guilt for not being in all places at
5 all times and assuming the worst of intentions from her neighbor, Mr. Black.

6 Victim A's father too wrote a victim impact statement. He too discusses
7 guilt, asking "[W]hat could I have done to prevent this?" ECF No. 53-1 at 4.

8 Even the child victims in these cases find a way to feel guilty for what has
9 happened to them. In this case, Victim B was forensically interviewed. He was
10 asked about naked pictures and ultimately presented with a redacted child
11 pornography image of himself. Victim B that he did not "remember that." He then
12 began crying and trying to hide his face from the interviewer, ultimately hiding
13 under a blanket in the room. Victim B then starts to blame himself for the pictures
14 by saying, "I was such an idiot."

15 There is one person at fault for these actions. It is not a parent, and it
16 certainly is not a child victim. There is one person who is guilty, and that person is
17 the Defendant.

18 It is genuinely difficult to overstate the seriousness of the offense in this
19 case. As a result of Defendant's crime, lives are forever changed. This is not a
20 hypothetical in this case. Defendant was able to carry on his pattern of abuse for
21 so long, the Court can see any number of victims and family members at different
22 stages in the process of attempting to heal from what Defendant has done. The
23 victims have detailed the impact Defendant's acts have had and continue to have
24 on their everyday lives, most especially ability to trust others.
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1 3. The need for the sentence imposed to afford adequate deterrence to
2 criminal conduct.

3 Defendant's abuse of children was not a discrete act or a momentary lapse in
4 judgment. The abuse went on over many years and ensnared many children.
5 Adequate deterrence will be a significant task. Victim A asks the court to "put him
6 away long enough that he can never hurt another fragile, innocent boy." ECF No.
7 53-1 at 2. His mother notes that she believes he must forgive Defendant, "But I
8 don't have to trust that Dale won't do this to another trial. And it's because of this
9 lack of trust that I ask that Dale Black is sentenced to the longest possible sentence
10 under the law. It is my fear that if Dale Black is released from custody that he will
11 molest another innocent child." ECF No. 53-1 at 3. Victim A's father indicates "I
12 ask the Court that you pass down a sentence to Dale Gordon Black that will not
13 allow him to get out and hurt anyone else." ECF No. 53-1 at 5.

14 A child not mentioned in the Indictment, but detailed in the PSIR is Victim
15 2. ECF NO. 53 at ¶ 13. Victim 2 (referred to as Victim 2 because he is not named
16 in the federal charges, as opposed to A, B, and C) was living near Defendant for a
17 while for a while. He helped Defendant with flooring for a few weeks and during
18 that time, he was sexually abused. Defendant began with typical grooming
19 behavior such as massages getting close to the genital area on Victim 2's body.
20 Later in the month, Defendant would masturbate Victim 2 with Jergens lotion.
21 When Victim 2 originally reported what had happened to him to a family member,
22 he was not believed.
23

24 Though no photos were recovered of Victim 2, it is certainly appropriate and
25 indeed important, for the Court to consider the misconduct. The state's sentence,
26 and thus the charge detailing Victim 2, will run concurrent with this Court's
27 sentence. Further, Victim 2's account further illustrates Defendant's continuing
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1 pattern of abuse, and the necessity of a significant sentence to afford adequate
2 deterrence.

3 The government, however, recommends a lifetime of supervised release.
4 The government is concerned by the recidivism rate for sex offenders generally.
5 See Dept. of Justice, Bureau of Justice Statistics, P. Langan, E. Schmitt, & M.
6 Durose, *Recidivism of Sex Offenders Released in 1994*, p. 1 (Nov. 2003) (reporting
7 that compared to non-sex offenders, released sex offenders were four times more
8 likely to be rearrested for a sex crime, and that within the first three years
9 following release 5.3% of released sex offenders were rearrested for a sex crime);
10 *Smith v. Doe*, 538 U.S. 84, 104 (2003) (“The risk of recidivism posed by sex
11 offenders is ‘frightening and high.’”) (quoting *McKune v. Lile*, 536 U.S. 24, 34
12 (2002)). Additionally, Defendant committed his offenses on particularly
13 vulnerable children, as has been detailed herein. The circumstances of the three
14 charged victims are detailed above. Given Defendant’s demonstrated willingness
15 to pursue victims in vulnerable states, the government argues he should be under
16 the supervision of a United States Probation Officer for the rest of his life.

17 The government is confident the recommended thirty year term of
18 imprisonment followed by supervised release for life will accomplish adequate
19 deterrence.
20

21 4. The need for the sentence imposed to protect the public from further
22 crimes of Defendant.

23 As has been detailed, Defendant’s crime is terribly serious and has had a
24 significant and lasting impact. The victims have noted Defendant's recidivism and
25 their concerns about his continuing recidivism in their letters to the Court. This is
26 an individual who has continued to victimize children for over a decade. He has
27 affirmatively taken steps, and even filled out applications, to do it. The public,
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1 particularly children, require protection from Defendant and the United States
2 believes the requested 35 year sentence is appropriate.

- 3 5. The need for the sentence imposed to provide Defendant with needed
4 educational or vocational training, medical care, or other correctional
5 treatment in the most effective manner.

6 Defendant has not identified any needed educational or vocational training.

- 7 6. The kinds of sentences available.

8 Defendant is subject to a sentence involving a term of imprisonment. The
9 offense to which Defendant pled guilty carries a mandatory minimum sentence of
10 fifteen years imprisonment.

- 11 7. The kind of sentence contemplated by the Sentencing Guidelines.

12 The Sentencing Guidelines contemplates a term of imprisonment.

- 13 8. Any pertinent policy statements issued by the Sentencing Commission.

14 There are no pertinent policy statements in this case.

- 15 9. The need to avoid unwarranted sentence disparity among defendants with
16 similar records who have been found guilty of similar conduct.

17 Defendant is subject to a sentence similar to others similarly situated.

18 IV. RESTITUTION, FINES, ASSESSMENTS, AND FORFEITURES

19 The Court should impose mandatory restitution, a maximum statutory and
20 guideline fine of \$750,000, the mandatory \$5,000 special assessment in accordance
21 with the Justice for Victims of Trafficking Act 2015 (“JVTA”) (18 U.S.C. §
22 3014(a)), and enter a final order of forfeiture as to the property identified in the
23 preliminary order of forfeiture.

24 A. Restitution

25 Restitution is mandatory pursuant to 18 U.S.C. §§ 2259 and 3663A. The
26 Court should order that Defendant pay restitution in the full amount sought by
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Victim A, as agreed to by the Defendant in the Plea Agreement. *See* ECF No. 49 at 16. In addition, the Court should order restitution in the full amounts sought by the other victims in this case.¹ *Id.* (“Defendant understands and agrees that the Court, in addition to any other penalty, the Court [*sic*] may order Defendant to make restitution any other victims of the offenses, pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not Defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement”); ECF No. 53 at 17. Pursuant to 18 U.S.C. § 3664(f)(2), (3), the Court must specify the manner in which payment of the restitution is made based on the Defendant’s assets and obligations and may order the Defendant to make a single, lump-sum payment immediately upon sentencing. In this case, Defendant has significant assets totaling more than \$1 million. ECF No. 53 at 15. The amount of restitution currently sought totals \$71,565.² ECF No.

¹ The United States continues to seek restitution requests and information from Victims B and C. At this time, it has been unable to secure restitution figures from those two victims. The United States may request an additional 90 days post-sentencing to inform the Court of a final determination of the losses incurred by Victims B and C. 18 U.S.C. § 3664(d)(5) (“If the victim’s losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim’s losses, not to exceed 90 days after sentencing.”).

² The parties agree to the amount of restitution sought by Victims A, SurferHair, and RapJerseys, which totals \$13,150. Victim SpongB has requested restitution of \$58,415. ECF No. 53 at 7, 17. The United States has sought additional information

53 at 7, 17. As such, the Court should order the Defendant to pay the restitution in full, in a single lump-sum payment, immediately upon sentencing.

B. Fines

The Defendant is subject to a \$250,000 statutory fine per count of conviction, for a total statutory fine of \$750,000. 18 U.S.C. § 3571(b). The Sentencing Guidelines fine range for the offenses of conviction is \$50,000 to \$750,000. ECF No. 53 at 16; U.S.S.G. §§ 5E1.2(c)(3) and 5E1.2(h)(1). The United States requests that the Court impose the maximum statutory and guideline fine of \$750,000 against the Defendant.

The Sentencing Guidelines state that “the court shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine.” U.S.S.G. § 5E1.2(a) (emphasis added). Here, the imposition of a fine is mandatory under the Sentencing Guidelines because the Defendant has the ability to pay a fine up to the maximum statutory and guideline amount, as explained below.

The imposition of fines and their amount is subject to the factors of 18 U.S.C. § 3572(a) and U.S.S.G. § 5E1.2(d). *See United States v. Eureka Labs., Inc.*, 103 F.3d 908, 913–14 (9th Cir. 1996) (“A sentencing court is required by 18 U.S.C. § 3572 to consider several factors when deciding whether to impose a fine and in what amount”). The Court is not required, however, to address every factor

in support of the restitution request from counsel for Victim SpongB and is awaiting a response. Unless further information is received, the United States and Defendant agree to restitution in the amount of \$6,000 for Victim SpongB. If that amount of restitution is ordered, the restitution owed by the Defendant would be reduced to \$19,150.

1 of § 3572 at sentencing “if the record, taken as a whole, indicates that the trial court
2 considered the section 3572 factors.” *Id.*; *see also United States v. Great Guns Inc.*,
3 7 F. App'x 666, 666–67 (9th Cir. 2001). Here, the factors of § 3572(a) and
4 § 5E1.2(d) all favor the imposition of a fine.

5 Section 3572(a) states that “[i]n determining whether to impose a fine, and
6 the amount, time for payment, and method of payment of a fine, the court shall
7 consider...”:

8 (1) the defendant’s income, earning capacity, and financial
9 resources;

10 (2) the burden that the fine will impose upon the defendant,
11 any person who is financially dependent on the defendant, or
12 any other person (including a government) that would be
13 responsible for the welfare of any person financially
14 dependent on the defendant, relative to the burden that
alternative punishments would impose;

15 (3) any pecuniary loss inflicted upon others as a result of the
16 offense;

17 (4) whether restitution is ordered or made and the amount of
18 such restitution;

19 (5) the need to deprive the defendant of illegally obtained
20 gains from the offense;

21 (6) the expected costs to the government of any
22 imprisonment, supervised release, or probation component of
the sentence;

23 (7) whether the defendant can pass on to consumers or other
24 persons the expense of the fine; and

25 (8) if the defendant is an organization, the size of the
26 organization and any measure taken by the organization to
27 discipline any officer, director, employee, or agent of the
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1 organization responsible for the offense and to prevent a
2 recurrence of such an offense.

3 All of the § 3572 factors support the imposition of a fine. The foremost
4 inquiry, the Defendant's ability to pay, clearly favors a fine. The Defendant has
5 disclosed assets totaling \$1,051,336, plus a monthly pension of \$3,100. ECF No.
6 53 at 15. Defendant's disclosure, however, significantly understates his actual
7 assets because he deducted potential future taxes, penalties, and costs from those
8 assets, even though any such taxes, penalties, or costs are unrealized. *Id.*; *see also*
9 Exhibit A, filed as a restricted document (Dale Black Financial Disclosure).³ For
10 example, Defendant's Vanguard 401(k) had an actual value of \$995,081 on
11 January 21, 2019. Exhibit A at 1. However, Defendant deducted potential,
12 unrealized future taxes of \$330,298 from the actual value of the investment, thus
13 providing a significantly understated asset value of \$664,783. *Id.*; ECF No. 53 at
14 15. Using the actual values of all of Defendant's assets, he had assets totaling
15 \$1,420,988, plus his monthly pension, as of January 21, 2019, which is much
16 higher than the stated total of \$1,051,336. Nonetheless, whether the Court relies on
17 the actual value or understated value of Defendant's assets, the Defendant clearly
18 has the "income, earning capacity, and financial resources" to pay a maximum fine
19 of \$750,000.
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22
23 ³ The United States relies on the uncorroborated account values stated by the
24 Defendant in his own written disclosure. Exhibit A. The Defendant did not provide
25 any account statements supporting the accuracy of the figures he provided. In
26 addition, the figures provided are as of January 21, 2019. *Id.* Defendant's assets may
27 have increased based on market conditions in the last five months.
28

1 A maximum fine of \$750,000 would not affect the Defendant's ability to pay
2 restitution, nor is the restitution amount so high that it should preclude the
3 imposition of a fine. 18 U.S.C. § 3572(a)(4), (b). Taking the Defendant's assets in
4 the PSR at face value – which significantly understates the actual value of his
5 accounts and investments as explained above – a maximum fine of \$750,000 plus
6 restitution up to \$71,565 and a \$5,000 JVT A assessment (see below) would still
7 leave the Defendant with \$224,771 in assets along with a monthly pension of
8 \$3,100. ECF No. 53. If the actual value of the assets are considered, the Defendant
9 would be left with assets of approximately \$594,423, plus his monthly pension,
10 after payment of restitution, a maximum fine, and the JVT A assessment.

11 The expected costs to the government of imprisonment and supervised
12 release also supports the entry of a maximum fine. 18 U.S.C. § 3572(b)(6). The
13 annual cost of imprisonment is estimated at \$36,300. ECF No. 53 at 17. At 15
14 years imprisonment, the minimum sentence recommended by the parties, the cost
15 of imprisonment would be \$544,500. Plus, a lifetime of supervised release would
16 significantly increase the costs, thus further warranting a maximum fine.

17 The remaining § 3572 factors are inapplicable as the Defendant does not
18 have any dependents (ECF No. 53 at 13), nor are there any ill-gotten proceeds or
19 corporate concerns implicated in this matter.

20 The factors enumerated in U.S.S.G. § 5E1.2(d) are very similar to the § 3572
21 elements. Section 5E1.2(d) states that “[i]n determining the amount of the fine, the
22 court shall consider”:

- 23
24 (1) the need for the combined sentence to reflect the
25 seriousness of the offense (including the harm or loss to the
26 victim and the gain to the defendant), to promote respect for
27 the law, to provide just punishment and to afford adequate
28 deterrence;

1 (2) any evidence presented as to the defendant's ability to pay
2 the fine (including the ability to pay over a period of time) in
3 light of his earning capacity and financial resources;

4 (3) the burden that the fine places on the defendant and his
5 dependents relative to alternative punishments;

6 (4) any restitution or reparation that the defendant has made
7 or is obligated to make;

8 (5) any collateral consequences of conviction, including civil
9 obligations arising from the defendant's conduct;

10 (6) whether the defendant previously has been fined for a
11 similar offense;

12 (7) the expected costs to the government of any term of
13 probation, or term of imprisonment and term of supervised
14 release imposed; and

15 (8) any other pertinent equitable considerations.

16 As demonstrated above, the Defendant's ability to pay, the absence of any
17 dependents of the Defendant, the lack of an adverse effect on restitution, and the
18 expected costs to the government for a term of imprisonment all favor the
19 imposition of a maximum fine.

20 The remaining § 5E1.2(d) factors also support a maximum fine. The offense
21 conduct is an extremely serious offense which resulted in very significant harm to
22 the Defendant's victims as explained in detail above. As such, a maximum fine is
23 warranted to promote the rule of law, impose just punishment, and deter future
24 conduct. U.S.S.G. § 5E1.2(d)(1). Likewise, any other equitable considerations
25 favor the imposition of a fine, including the seriousness of the offense conduct, the
26 significant harm to the victims, the need for deterrence, and the fact that after
27 payment of the maximum fine the Defendant would not be rendered destitute and
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1 would still have assets of approximately \$250,000 to \$600,000. Finally, any
2 collateral consequences of the conviction do not affect the fine since the Defendant
3 has sufficient assets to pay all monetary penalties and the Defendant has not been
4 fined previously for a similar offense.

5 The Sentencing Guidelines further state that “[t]he amount of the fine should
6 always be sufficient to ensure that the fine, taken together with other sanctions
7 imposed, is punitive.” U.S.S.G. § 5E1.2(d). Given the Defendant’s significant
8 assets, a maximum fine of \$750,000 would ensure that the fine is punitive.

9 Based on the Defendant’s significant liquid assets, the United States requests
10 that the Court order the Defendant to pay the fine in full immediately upon
11 sentencing. 18 U.S.C. § 3572(d)(1) (“A person sentenced to pay a fine or other
12 monetary penalty, including restitution, shall make such payment immediately,
13 unless, in the interest of justice, the court provides for payment on a date certain or
14 in installments”).

15 Finally, the fine paid by the Defendant would not simply go into the
16 Government’s pocket. By statute, the Defendant’s fine payment would be
17 deposited with the Crime Victims Fund. The money in the Crime Victims Fund is
18 then distributed through several direct programs and grants to states, including
19 funding the Children’s Justice Act which helps states and tribes develop, establish,
20 and operate programs to improve the investigation and prosecution of child abuse
21 and neglect cases, particularly cases of child sexual abuse and exploitation, and to
22 improve the handling of cases of suspected child abuse or neglect fatalities.

23 C. JVTA Assessment

24 Pursuant to 18 U.S.C. § 3014(a)(3), the Court shall impose a \$5,000 JVTA
25 assessment against the Defendant for his conviction for an offense under Chapter
26

1 110. The only exception to the JVT A assessment is indigence, which does not
2 apply to the Defendant. ECF No. 53 at 15.

3 Section 3014(b) provides that the JVT A assessment shall not be payable by
4 the Defendant until he has satisfied all outstanding fines and orders of restitution.
5 Since the Defendant has the ability to immediately pay the restitution and fine
6 sought by the United States, the Defendant should likewise be required to pay the
7 JVT A assessment immediately upon sentencing.

8 D. Forfeitures

9 As the result of the Defendant's guilty plea to Counts 1, 2, and 3, of the
10 Indictment, filed on June 5, 2018, charging the Defendant with Production of Child
11 Pornography, in violation of 18 U.S.C. § 2251(a), for which the United States
12 sought forfeiture of assets pursuant to 18 U.S.C. § 2253 (ECF No. 49 at 19-22),
13 and the Preliminary Order of Forfeiture entered December 18, 2018 (ECF No. 51),
14 the United States requests that the Court enter a final order of forfeiture at
15 sentencing in accordance with Fed. R. Crim. P. 32.2(b)(4) forfeiting the following
16 property from Defendant:

17 - Any and all digital devices and peripherals, computers, external hard
18 drives, iPads, phones, and cameras, including but not limited to the
19 following listed assets:

20 - Dell Desktop Computer Model XPS 8500, Serial Number
21 HDLC4V1

22 - Apple iPhone 6, Model A1549, IMEI Number
23 354406064655583

24 - Apple iMac 27 inch Computer Model, A1419, Serial Number
25 WCC4M2XUKZ9D
26
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1 - Western Digital My Book HD External Hard Drive, Serial
2 Number WCC4M2XUKZ9D

3 - 2015 Subaru Legacy, VIN: 4S3BNAN68F3057860, Washington
4 License Plate: AUX4435

5 - \$185,900 U.S. Currency (cash in-lieu of forfeiture of Defendant's
6 residence)

7 The forfeiture of the foregoing assets is separate and distinct from the
8 restitution, fine, and JVT A assessment sought by the United States. *See United*
9 *States v. Newman*, 659 F.3d 1235, 1240-41 (9th Cir. 2011) ("When the government
10 has met the requirements for criminal forfeiture, the district court must impose
11 criminal forfeiture, subject only to statutory and constitutional limits... Criminal
12 forfeiture is also separate from restitution, which serves an entirely different
13 purpose. Congress conceived of forfeiture as punishment for the commission of
14 various [crimes]."); *United States v. Davis*, 706 F.3d 1081, 1083 (9th Cir. 2013)
15 ("Forfeiture is imposed as punishment for a crime; restitution makes the victim
16 whole again"). The Ninth Circuit has repeatedly held that imposing forfeiture and
17 restitution is not double recovery. "Although Defendants must pay both restitution
18 and criminal forfeiture, that result is not an impermissible 'double recovery.'" *Newman*,
19 *659 F.3d at 1241*; *see also United States v. Feldman*, 853 F.2d 648, 663
20 (9th Cir. 1988) (the district court does not lose its discretion to impose restitution
21 merely "because a defendant must also forfeit the proceeds of illegal activity")
22

23 Accordingly, the imposition of forfeiture against the Defendant should not
24 have any bearing on the imposition of other monetary penalties, except to the
25 extent it would affect the Defendant's ability to pay the fine under the factors
26 addressed above, which it does not. Moreover, the forfeiture of the vehicle and
27 \$185,900 were already taken into account in the Defendant's financial analysis,
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1 which shows assets in excess of \$1 million. *See* ECF No. 53 at 15 (the assets list
2 excludes the 2015 Subaru and reduces the equity in the residence to reflect the
3 Government's forfeiture of \$185,900).

4 V. GOVERNMENT'S SENTENCING RECOMMENDATION

5 The government recommends the court impose a sentence to thirty-five
6 years imprisonment as well as a lifetime term of supervised release. The
7 government also recommends the court restitution to the victims.

8 Respectfully submitted this 25th day of June 2019.

9
10 Joseph H. Harrington
11 United States Attorney

12 s/ Alison L. Gregoire
13 Alison L. Gregoire
14 Assistant United States Attorney

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17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on June 25, 2019 I electronically filed the foregoing
19 with the Clerk of the Court using the CM/ECF System which will send notification
20 of such filing to the following:

21 Scott W. Johnson, scott@johnsonorr.com

22
23
24 s/Alison L. Gregoire
25 Alison L. Gregoire
26 Assistant United States Attorney
27
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